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IN THE

Supreme Court of the United States

October Term, 1950.

No. 235

CHICAGO & SOUTHERN AIR LINES, INC., *Petitioner*

v.

CIVIL AERONAUTICS BOARD, *Respondent*
RESORT AIRLINES, INC., *Intervener*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF OF INTERVENER IN OPPOSITION.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF OF INTERVENER IN OPPOSITION.

OPINIONS BELOW.

The per curiam order of the United States Court of Appeals for the District of Columbia Circuit (R. 71-72) dismissing the Petition for Review of the order of the Civil Aeronautics Board (R. 42-43) has not yet been reported.

JURISDICTION.

The grounds upon which jurisdiction of this Court is invoked are set out in the Petition for Writ of Certiorari at page 2.

QUESTIONS PRESENTED.

1. Whether the holding of this Court in *Chicago & Southern Air Lines* v. *Waterman Steamship Corporation,* 333 U. S. 103 (1948) precludes judicial review of the order involved in this proceeding, which completely emanated from the President in that it only reflected a directive of the President contrary to the recommendation of the Board.

2. Whether judicial review of a Petition for Review filed with the Court of Appeals for the District of Columbia Circuit on August 8, 1949 is precluded by the fact that it was not filed within sixty days "after the entry of such order" of the Civil Aeronautics Board on June 1, 1949, as specifically required by Section 1006(a) of the Civil Aeronautics Act.

3. Whether judicial review of the objections to such order which Petitioner now raises is precluded by the fact they were not raised before the Civil Aeronautics Board at any time as required by Section 1006(e) of the Civil Aeronautics Act although there was ample time to do so in the form of a Petition for Reconsideration to the Board as authorized by its Rules of Practice.

STATUTE AND RULE INVOLVED.

The pertinent statutory provisions are cited in Appendix A of the Petition for Writ of Certiorari. The pertinent Rules of Practice of the Civil Aeronautics Board are set out in Appendix B, *infra,* page 17.

STATEMENT.

Section 801 of the Civil Aeronautics Act[1] provides that the "issuance" or the "denial" of any certificate authorizing an air carrier to engage in overseas or foreign air transportation "shall be subject to the approval of the President". Pursuant to this Section of the Act the Board submitted a recommendation to the President that both applications in a consolidated proceeding before the Board entitled the "Skycruise" Case, Docket No. 2377, et al., filed by the Intervener, Resort Airlines, Inc. (Resort), and American Air Export and Import Company (AAXICO), be denied. The President approved of the recommendation that AAXICO's application be denied and disapproved the recommendation that Resort's application be denied. Although the Act does not require the President to state his reasons for approval or disapproval of Board action, he returned the Board's recommendation with the advice (as reported without quotation by the Board) that "for reasons affecting our relations with foreign countries and in the interest of our national security, it is desirable and proper that Resort Airlines, Inc. be granted temporary authority to engage in foreign and overseas air transportation substantially in accord with the recommendation of the Examiner" with certain exceptions not here relevant. (R. 41) Acting pursuant to that Presidential directive under Section 801 of the Act, the Board on June 1, 1949, entered its revised order, together with an explanatory opinion, carrying into effect this decision of the President (R. 36-43) and submitted it to the President who approved it on June 9, 1949, by signing it as "Approved". (R. 43) That order, which Petitioner now seeks to have reviewed here, granted a temporary certificate to Resort authorizing it to engage

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[1] The Civil Aeronautics Act will hereafter be referred to as the "Act" and the Civil Aeronautics Board will be termed the "Board".

in foreign and overseas air transportation limited to round-trip, all-expense escorted tours between eight points in the United States and certain intermediate points in foreign countries and United States possessions, subject to certain further limitations. (R. 43-45) The order further provided that the certificate would have a life of five years and was to become effective 60 days after the date of its approval by the President unless such effective date were extended by order of the Board prior to such date either on the Board's own initiative or upon the filing of a petition for reconsideration of the Board's order of June 1, 1949, (R. 45) (Petitions for reconsideration are authorized by the Board's Rules of Practice as set out in Appendix A, *infra.*) Although such petitions were filed by several of the other party intervenors, the Petitioner herein failed to file any petition with the Board for reconsideration of the order complained of herein; and it did not at any time ask the Board to extend the effective date of the certificate or to consider the objection that the President had exceeded his statutory authority—a contention which has never been presented to the Board. On August 4, 1949, the Board by Order (Serial No. E-3117) denied the said petitions for reconsideration and the certificate issued to Resort became effective, according to its terms, on August 8, 1949. On that date the Petition for Review was filed herein. (R. 53)

On May 8, 1950 the Court of Appeals for the District of Columbia Circuit denied Petitioner's Petition for Rehearing and Reconsideration of the *per curiam* order, dated January 18, 1950, dismissing the Petition for Review, and indicated that its action in such dismissal was on the authority of *Chicago & Southern Air Lines* v. *Waterman Steamship Co.*, 333 U. S. 103 (1948). (R. 71-72) The Court also stated that it had taken judicial notice of the fact that H.R. 5771, 70th Cong., 2d Sess., died in Committee. (R. 71) This bill, set out in full in Appendix B attached hereto, filed March 8, 1948, and referred to the Committee on Interstate and Foreign Commerce, was designed to amend Section

1006(a) of the Act to authorize judicial review of orders of the Board affecting the rights of domestic air carriers to engage in overseas or foreign air transportation.

ARGUMENT.

1. The President's authority to approve an order of the Board granting a certificate for foreign air transportation was exhaustively considered by this Court in the Waterman case. The Court of Appeals for the District of Columbia Circuit was clearly correct in holding that the Waterman case precludes judicial review of the order of the Board approved by the President, carrying into effect a decision made by him, involved in this proceeding.

Petitioner presented to the Court below for review an order of the Board which is not only squarely within the holding of this Court in *Chicago & Southern Air Lines* v. *Waterman Steamship Co.*, 333 U. S. 103 (1948), but represents an even stronger factual situation than was presented there. The *Waterman* case held that an order of the Board subsequently approved by the President was non-reviewable since "whatever of the order emanates from the President is not susceptible to review by the Judicial Department." *Idem*, 112. The order in that case coincided with a recommendation of the Board that Chicago & Southern Air Lines be certified for a route in the Latin American Area. In the present case, however, the President disapproved of the recommendation of the Board that the application of Resort be denied and directed that a certificate be issued to it. The order which Petitioner complains of herein, therefore, *completely* "emanates from the President" since it reflects purely and simply the directive of the President, which was contrary to the recommendation of the Board, and is unquestionably within the scope of the *Waterman* case holding such orders to be non-reviewable by the Judicial Department.

Petitioner seeks the issuance of a writ of certiorari from this Court on the grounds that the factual situation in the *Waterman* case is distinguishable from the instant case because its contention that the President has exceeded his statutory authority under Section 801 of the Act by (1) specifying the particular carrier to render the air transportation which he considered to be in the national interest, and (2) designating such carrier without the benefit of a finding by the Board as to its "fitness, willingness, and ability," is an irregularity within the meaning of the introductory phrase of the *Waterman* case opinion, which speaks of "proceedings not challenged as to regularity." *Idem*, 105. The question before this Court at this time, therefore, is whether the court below was correct in applying the *Waterman* case in view of this contention of Petitioner. This demands a consideration of whether this allegedly new element injected by Petitioner takes this case out of the "broad sweep of the doctrine laid down in the *Waterman* case"[1] and the comprehensive study of the principles which this Court applied therein.

Certainly so much of Petitioner's objection that the President acted without a finding of "fitness" is squarely within

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[1] The Court of Appeals for the Second Circuit categorized the *Waterman* decision in this manner in holding that under the *Waterman* case it was without jurisdiction to review an order of the Board subsequently approved by the President. *Trans-World Airlines* v. *The Civil Aeronautics Board, et al.*, Civil Action No. —— and *Brian O. Sparks, et al.* v. *The Civil Aeronautics Board*, Civil Action No. 21728, decided August 14, 1950. The order of the Board in this Second Circuit decision, like the instant case, reflected a directive of the President contrary to the recommendation of the Board in which he advised that (1) the transfer to Pan American World Airways, Inc., of American Overseas Airlines' temporary certificate of public convenience and necessity, and the acquisition by the former of the property, assets, and business of the latter should be approved, and (2) the certificates of Pan American and TWA should be amended to authorize Pan American to serve Paris and Rome and TWA to serve London and Frankfurt.

the factual situation involved in the *Waterman* case itself. One of the contentions raised on review there was that the Board had submitted a legally defective finding to the President of the fitness of the carrier which it recommended to the President for certification since the finding was not supported by substantial evidence. *Idem*, 117. This contention may or may not have been true for this Court never considered it on the merits and dismissed the charge with the holding that it did not have jurisdiction to consider the Petition for Review. If this Court in the *Waterman* case decided that it did not have jurisdiction to review what might have been an inadequate, indeed, a possibly mistaken recommendation wrongly influencing the President's determination, it is impossible to see how Petitioner can now argue that jurisdiction exists to consider the question of whether the lack of any recommendation at all on this point constituted defective procedure.

Of even more importance, however, is that fact that both of Petitioner's objections are fully within the scope of the two principles which the Supreme Court applied in the *Waterman* case in considering the reviewability by the Judicial Department of an order of the Board approved by the President. This Court there determined that such orders "embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate," *Idem*, 114, and that to review such orders would be to render "an advisory opinion in its most obnoxious form." *Idem*, 113. The exhaustive treatment given these matters in the opinion should set at rest any contention that a factual variation such as Petitioner alleges in this case destroys the applicability of the *Waterman* doctrine.

In the *Waterman* case this Court first analyzed the nature of foreign air transportation and recognized that "aerial navigation routes and bases should be prudently correlated with facilities and plans for our own national defense and raise new problems in conduct of foreign relations." *Idem*, 108. It concluded, therefore, that pursuant to this recogni-

tion Congress had provided for Presidential control which "is not limited to a negative but is a positive and detailed control over the Board's decisions, unparalleled in the history of American administrative bodies," *Idem*, 109, and was a type of control which has "long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Idem*, 111.

In the present case the Board, in its explanatory opinion accompanying its order of June 1, 1949, states that after it submitted to the President its decision in which it decided the application of Resort should be denied, the President "advised the Board that for reasons affecting our relations with foreign countries and in the interest of our national security, it is desirable and proper that Resort Airlines, Inc., be granted temporary authority . . ." (R. 41). The Board reflected this directive of the President in an order subsequently approved by the President. This order granting a certificate to Resort, over which Petitioner now seeks judicial review, is, therefore, *based solely upon the President's judgment in the exercise of his political power* and fully falls within the recognition by this Court in the *Waterman* case that the "Judiciary has neither aptitude, facilities nor responsibility" to handle such questions. *Idem*, 111.

This Court also applied the principle in the *Waterman* case that the Judicial Department will not exercise jurisdiction over matters where they cannot with finality decide the issues present. On page 113 of its opinion this Court said: "To revise or review an administrative decision which has only the force of a recommendation to the President would be to render an advisory opinion in its most obnoxious form—advice that the President has not asked, tendered at the demand of a private litigant, on a subject concededly within the President's exclusive, ultimate control."

Assume that judicial review is taken in this case and Petitioner's contentions expressed in its Petition for Review are sustained. The court below would remand the matter to

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the Board for further proceedings in accordance with its opinion, but anything which the Board did pursuant thereto would be subject to later Presidential approval, which this Court in the *Waterman* case described as a "positive and detailed" control of the Board's action. The President, therefore, has the ultimate discretion to disregard any decision of the court. Such a situation clearly falls within the scope of the *Waterman* case, where this Court forcefully pointed out, at page 113, of the opinion that "Judgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another Department of Government" and "if the President may completely disregard the judgment of the court, it would only be because it is one the courts were not authorized to render."

It is submitted, therefore, that the court below was completely correct in its interpretation of the *Waterman* case to cover the instant case. The contentions which Petitioner now raises do not present a distinguishing factual situation raising any important new issues which have not already been fully covered by the extensive treatment of this entire question in the *Waterman* case.

2. There is no conflict between the Court of Appeals for the District of Columbia Circuit granting the motion to dismiss the Petition for Review and a recent decision of the United States District Court for the District of Columbia sitting as a three-judge court in the case of Colonial Airlines v. Adams, et al., 87 Fed. Supp. 242 (1949).

Petitioner argues that the *Colonial* case and the action of the court below are inconsistent.[1] (Pet. 13, 14.) There is

[1] The only Circuit Judge sitting in the *Colonial* case was Judge Proctor, 87 Fed. Supp. 242, who also joined in granting the motion to dismiss in this case (R. 71). In his opinion, at least, there is no conflict between the two decisions.

no conflict between the substantive holdings of the two decisions but Petitioner asserts that the "assumption" behind the *Colonial* decision conflicts with the holding of the court below and, therefore, a conflict exists which warrants the grant of a writ of certiorari. Intervener submits that the two cases are completely distinguishable and cannot possibly be considered inconsistent on their facts.

First of all, the *Colonial* case did not concern itself with the question involved in the instant case of whether a court has jurisdiction of an order of the Board *after* it had been approved by the President pursuant to Section 801 of the Act. The *Colonial* court took jurisdiction *prior* to Presidential action. After observing that it might seem that the Plaintiff should not be heard because no competitive permit had been issued, the *Colonial* court said at page 243: "However, as there is no statutory judicial review whatever provided with respect to the administrative action here involved," (the issuance of a foreign air carrier permit), "the Court is of the view that the constitutional question presented should now and here be met and answered."

Secondly, it is by no means clear that the "assumption" to which Petitioner refers in the *Colonial* case is inconsistent with the decision of the court below. All that the *Colonial* case assumed was that when the Board makes recommendations to the President, it must make the findings required by Section 402(b) that the applicant is fit and the issuance of the permit is in the public interest. Thus if the Board recommends the *issuance* of a permit it must make these findings according to Section 402. But the *Colonial* case did not say that if the Board recommends the *denial* of a permit on the grounds that it is not required by the public interest, it must go through the academic procedure of passing on the fitness of the applicants. This is the situation which is involved in the instant case and is a matter which the *Colonial* case did not consider at all.

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3. Judicial review of the Board's order is precluded by the provisions of Section 1006(a) of the Civil Aeronautics Act in that it was not sought until after the expiration of the appeal period of sixty days from the entry of the order by the Board.

Section 1006(a) of the Act which is set out in full on pages 23 and 24 of the Petition for Writ of Certiorari reads in part:

> "Any order . . . issued by the (Board) under this Act shall be subject to review upon petition filed within sixty days after the entry of such order. . . . After expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore."

The President approved the order of the Board entered on June 1, 1949 (R. 42) eight days later on June 9, 1949 (R. 43). Until this date the order could not be published in accordance with Section 801 of the Act. However, this still left fifty-two days until the expiration of the sixty day appeal period running from the entry of the order by the Board during which time a Petition for Review could have been but was not sought. Nor did Petitioner file a Petition for Reconsideration with the Board of its order which would have tolled this appeal period until the Board acted thereon. *Braniff Airways* v. *Civil Aeronautics Board*, 147 F. 2d 152 (C. C. A. D. C. 1945). Sixty days from the entry of the Board's order expired on August 1, 1949 and the Petition was not filed until August 8, 1949 (R. 53). Petitioner's delay in filing has therefore deprived the court below of jurisdiction to hear the Petition for Review because it was not filed within the statutory period and no "leave of court" upon a showing of "reasonable grounds" was obtained to permit a late filing.

Petitioner has sought to avoid the results of its tardy Petition for Review by arguing that "since the Board is prohibited under Section 801 of the Act from publishing

its final order until Presidential approval has been obtained, the sixty day appeal period cannot begin to run until Presidential approval has attached" (Pet. 5). It is true, of course, that some time delay will result between the time of the entry of an order by the Board concerning foreign air transportation and the required Presidential approval. Whether or not it would have been desirable for Congress to have extended the appeal period under these circumstances is not the question, however, for Congress has the power to "formulate the conditions under which resort to the courts may be had" to review an administrative proceeding, *American Power & Light Co.* v. *Securities and Exchange Commission*, 325 U. S. 385, 389 (1946), and in other administrative legislation has made it perfectly clear that it is capable of precisely stating the dates from which an appeal period commences to run and for what length of time. Nor is it necessary to read the plain statutory language of Section 1006(a) setting an appeal period running from the "entry of such order" of the Board in any other way in order to keep within the general policy of the Act. If a delay between the entry of the Board's order and Presidential approval is substantial, it would surely be grounds for asking and receiving "leave of court" to permit a late filing under Section 1006(a)—an opportunity which Petitioner had to extend the fifty-two days which it already had but did not utilize prior to filing its Petition for Review.

4. Judicial review of the contentions which Petitioner now raises is precluded by the fact that they were never raised before the Board at any time as specifically required by Section 1006(e) of the Civil Aeronautics Act.

Section 1006(e) of the Act which is set out in full on page 24 of the Petition for Writ of Certiorari provides in part:

> "No objection to an order of the (Board) shall be considered by the Court unless such objection shall have

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> been urged before the (Board) or, of it was not so urged, unless there were reasonable grounds for failure to do so."

This Court has declared that compliance with a provision of this type in statutes dealing with judicial review of administrative action is a prerequisite to judicial review. *Marshall Field & Co.* v. *National Labor Relations Board,* 318 U. S. 253, 256 (1943).

Petitioner is now seeking review of the order of the Board on the grounds that the President exceeded his statutory authority under Section 801 of the Act in two respects. Although these contentions could not have been made prior to the issuance of the final order of the Board which represented final action of both the President and the Board, Petitioner had ample opportunity thereafter to do so in the form of a Petition for Reconsideration of the order as specifically provided for in the Board's regulations.[1] Petitioner did not file any Petition for Reconsideration and is, therefore, presenting these contentions to the court below for the first time in patent contravention of the provisions of Section 1006(e) cited above.

It is no excuse for failure to comply with Section 1006(e) to argue that such action might have been futile, as Petitioner has apparently done when it states that the only recourse after Board and Presidential action was "to seek judicial review" (Pet. 5). It has been clearly established that rigorous compliance with provisions such as Section 1006(e) must be made prior to judicial review even though the alleged defects in the administrative order involve, as do Petitioner's two contentions, a breach of statutory au-

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[1] The Board's "Rules of Practice" authorizing Petitions for Reconsideration are set out in full in "Appendix A."

thority[1] or unconstitutional action.[2] Provisions such as Section 1006(e) are *requirements imposed by Congress* which the courts cannot alter. *Todd* v. *Securities & Exchange Commission*, 137 F. 2d 475, 478 (C. C. A. 6th 1943).

Of even more importance, however, is the fact that if Petitioner's alleged deficiencies in the Board's order had been brought to its attention, action might very well have been instituted by the Board resulting in the issuance, with the President's approval, of a revised order correcting the alleged irregularities. This judicial proceeding might thereby have been rendered completely unnecessary. Since Petitioner has not given the Board an opportunity to supply the alleged deficiencies to its order without a valid reason for failure to do so, it has not complied with the prerequisite for judicial review contained in Section 1006(e).

CONCLUSION.

Petitioner has urged this Court to grant a writ of certiorari on the grounds that the issues raised in this proceeding are of far-reaching importance requiring judicial determination. The Intervener submits that this argument might have been used by the Petitioner when it sought a writ of certiorari from this Court in the *Waterman* case, but that these issues have now been put at rest by the comprehensive treatment which they received in that case. The court below was therefore perfectly correct in dismissing the Petition for Review on the basis of the *Waterman* case. The contentions which Petitioner now raises do not create any distinguishing feature which bring this case out of the broad sweep of the doctrine laid down in the *Waterman*

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[1] e.g. *Marshall Field & Co.* v. *National Labor Relations Board*, 318 U. S. 253 (1943); *Phillips* v. *Securities and Exchange Commission*, 156 F. 2d 606 (C. C. A. 2nd 1946).

[2] e.g. *Pacific Gas & Electric Co.* v. *Securities and Exchange Commission*, 127 F. 2d 378 (C. C. A. 9th 1942), affirmed 324 U. S. 826 (1944), rehearing denied 324 U. S. 890 (1944); *Todd* v. *Securities and Exchange Commission*, 137 F. 2d 475 (C. C. A. 6th 1943).

case. Certainly, if this Court declared in the *Waterman* case that the Judicial Department did not have jurisdiction to review an order of the Board approved by the President in which the President agreed with the Board's recommendations, on the grounds that to do so would be to interfere with the political authority of the President and to render an obnoxious advisory opinion, *a fortiori* no jurisdiction exists here where the order for which review is sought only reflects a directive of the President contrary to the recommendations of the Board.

Petitioner also labors under two jurisdictional defects which should cause this Court to deny its application for a writ in that it has failed to comply with procedural requisites for judicial review as specifically set forth in Section 1006 of the Act. It filed its Petition for Review on August 8, 1949 with the court below which was not within sixty days of the entry of the Board's Order on June 1, 1949 as required by Section 1006(a) of the Act. In addition, it did not present to the Board at any time its contentions that the President exceeded his statutory authority although it could have done so by filing a Petition for Reconsideration and, perhaps, have avoided this entire judicial proceeding. It is barred from raising these issues on appeal, therefore, by the provisions of Section 1006(e) of the Act.

WHEREFORE, Intervenor, Resort Airlines, Inc., prays that this Honorable Court deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit filed by the Petitioner, Chicago & Southern Air Lines, Inc.

Respectfully submitted,

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APPENDIX A.

Section 285.11 of the Civil Aeronautics Board's Rules of Practice in Economic Proceedings, 14 C.F.R. 285.11 [1]

Petition for rehearing, reargument, or reconsideration—

(a) ***Parties.*** **Any party may petition for rehearing, reargument, or reconsideration of any final order by the Board in a proceeding, or for further hearing before decision by the Board.**

(b) ***Contents of petitions.*** **(1) The matters of record claimed to have been erroneously decided must be specified, and the alleged errors, and the grounds relied upon must be briefly and specifically stated in the petition.**

(2) If a final order of the Board is sought to be vacated or modified by reason of matters which have arisen since the hearing, or of a consequence which would result from a compliance therewith, or both, the new matter, the resulting consequence, or both, which are relied upon by the petitioner must each be set forth in the petition. Where the petition is based wholly or in part upon new matter, the petition must contain a statement that the petitioner, with due diligence, could not have known or discovered the new matter prior to the time of the hearing.

(3) The petition must set forth a brief statement of the relief sought by the petitioner and conform to requirements of § 285.3.

(c) ***Filing and service of petitions.*** **Such petition for rehearing, reargument, or reconsideration, must be filed within thirty days after service of the order sought to be vacated or modified. After the expiration of said thirty days, such a petition may be filed only by leave of the Board granted pursuant to formal application upon a showing of reasonable grounds for failure to file the petition within the prescribed thirty-day period. Any such petition or application shall be served by the petitioner or applicant upon all parties to the proceeding or their attorneys of record.**

(d) ***Stay of orders.*** **No petition for rehearing, reargument, or reconsideration filed in accordance with this section, or the granting thereof, shall operate as a stay of the effective date of the final order sought to be modified or vacated by such petition, unless specifically so ordered by the Board.**

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[1] On June 23, 1949 this Section was redesignated as Section 302.11 effective July 1, 1949.

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APPENDIX B.

80th Congress H.R. 5771 2d Session

IN THE HOUSE OF REPRESENTATIVES

March 9, 1948

Mr. Bartlett introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce.

A BILL

To amend the Civil Aeronautics Act of 1938, as amended, to provide for judicial review of orders of the Civil Aeronautics Board affecting the rights of domestic air carriers to engage in overseas or foreign air transportation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 1006 of the Civil Aeronautics Act of 1938, as amended (June 23, 1938, 52 Stat. 1024), is hereby amended to read as follows:

"(a) Any order, affirmative or negative, including but not limited to any order in respect of any domestic air carrier subject to the approval of the President as provided in section 801 of this Chapter, issued by the Board under this chapter, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this chapter, shall be subject to review by the circuit courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore."

Sec. 2. That this amendment will remove ambiguity from the language employed in section 1006 of the Civil Aeronautics Act of 1938; and, in all applicable cases before them, the Federal courts shall construe the language of this amendment as if it were an original part, and set in the context of the Civil Aeronautics Act of 1938.